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FILED
2008 JUL 22 PM 4:29
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

'08 CV 1321 JAH NLS

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

AGROLIBHERE S.A. de C.V., a Mexican Corporation;

Plaintiff,

v.

NATURIPE BERRY GROWERS; an unknown business entity; NATURIPE FARMS, an unknown business entity; NATURIPE FARMS BY HORTIFRUIT; an unknown business entity; HORTIFRUIT, an unknown business entity; HORTIFRUIT IMPORTS, an unknown business entity; THOMAS R. AM RHEIN, an individual; and JUAN FERRARI PALLOMARI, an individual;

Defendants.

**CASE NO.**

**COMPLAINT FOR:**

**(1) BREACH OF CONTRACT**
**(2) VIOLATION OF PACA [7 U.S.C. §499(b)]**
**(3) ENFORCEMENT OF PACA TRUST**
**(4) BREACH OF FIDUCIARY DUTY**
**(5) CONSTRUCTIVE FRAUD**
**(6) CONVERSION**
**(7) GOODS HAD AND RECEIVED**
**(8) UNJUST ENRICHMENT & CONSTRUCTIVE TRUST**
**(9) ACCOUNTING**

**[JURY TRIAL REQUESTED]**

COMES NOW, AGROLIBHERE S.A. de C.V., ("Plaintiff"), by and through its attorney, Scudi Johnson & Ayers, LLP, for its Complaint against Defendants NATURIPE BERRY GROWERS, NATURIPE FARMS, NATURIPE FARMS BY HORTIFRUIT, HORTIFRUIT, HORTIFRUIT IMPORTS, THOMAS R. AM RHEIN, and JUAN FERRARI PALLOMARI (collectively referred to herein as "Defendants").

## STATEMENT OF FACTS

1. This court has jurisdiction by reason of diversity of citizenship pursuant to 28 U.S.C. § 1332 in that the Complaint is between citizens of different states and the amount in controversy exceeds $75,000.00, exclusive of interest and costs. The court also has jurisdiction by reason of 28 U.S.C. § 1331, which gives this court jurisdiction over civil actions founded on a claim or right arising under the laws of the United States, including 7 U.S.C. § 499 *et seq.*, the Perishable Agricultural Commodities Act ("PACA").

2. Plaintiff is an entity organized and existing under the laws of the Republic of Mexico, with its principal place of business in Vicente Guererro, Baja California, Mexico.

3. Upon information and belief, the entity Defendants are, and at all times relevant to this action were, business entities of an unknown type conducting business in this judicial district. Upon information and belief, the individual Defendants, THOMAS R. AM RHEIN and JUAN FERRARI PALLOMARI, are individuals who are officers, directors, and/or managing agents of one or more of the entity Defendants.

4. Upon information and belief, Defendants do, and at all times relevant to this action did, maintain federal PACA licenses to transact their business in perishable agricultural commodities in interstate commerce.

5. Upon information and belief, Defendant THOMAS R. AM RHEIN is an individual residing in the state of California and employed as the Vice-President of Operations for Naturipe Berry Growers.

6. Upon information and belief, JUAN FERRARI PALLOMARI is an individual employed as the General Manager of Naturipe Farms.

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7. Plaintiff is informed and believes, and thereon alleges, that at all relevant times, each of the Defendants, were agents, servants, employees and/or the alter ego of the remaining Defendants, and in doing the acts and omissions hereinafter mentioned, were acting within the scope of their authority as such agents, servants, employees and/or alter ego, with the knowledge, permission, consent and/or ratification of the other Defendants.

8. Plaintiff is, and at all times relevant to this action was, a company in the business of growing fresh berries in Mexico, including blackberries, raspberries, blueberries, and strawberries.

9. Upon information and belief the entity Defendants are related companies engaged in the sale and distribution of fresh produce to businesses in interstate commerce in the United States and Mexico. The individual Defendants are responsible for the handling of the fresh produce at issue in this action on behalf of their respective corporate employers.

10. In early 2008, Plaintiff and Defendants entered into a oral agreement in which Defendants agreed to accept Plaintiff's fresh organic raspberries, blueberries and blackberries on consignment for sale in the United States. For this purpose, Defendants shipped boxes and containers to Plaintiff's farm, and the produce was packaged and shipped to Defendants for sale to third party buyers in the United States.

11. Defendants agreed to market the produce at the best available market price and to pay Plaintiff all proceeds from these sale, minus a commission of 8%.

12. Under PACA, Defendants were fiduciaries of Plaintiff and had an obligation to market the produce to the best of its ability, to fully account promptly to Plaintiff for the handing of its produce and to pay promptly for the produce.

13. Under PACA regulations (7 C.F.R. § 46.2(z)), account promptly for consignment transactions means to render a full and correct accounting within twenty (20) days of receipt of the produce or ten (10) days from sale of the produce, whichever comes first.

14. Under PACA regulations (7 C.F.R § 46.2(aa)), prompt payment for consignment transactions means full payment within twenty (20) days of receipt of the produce or ten (10) days from sale of the produce, whichever comes first.

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15. Despite repeated requests and although the time provided by PACA for accounting and payment have elapsed, Defendants have failed and refused to pay Plaintiff the proceeds from the sales of its produce which are due to it.

16. Despite repeated requests, Defendants have also failed and refused to account to Plaintiff for their handling of Plaintiff's produce and all sales of the produce.

17. Upon information and belief, the value of the produce which has not been accounted for and for which Plaintiff has not been paid is approximately $1 million dollars.

**FIRST CAUSE OF ACTION**

**(Breach of Contract Against All Defendants)**

18. Plaintiff realleges and incorporates by this reference the allegations contained in paragraphs 1 through 17 of this Complaint, as if set forth in full herein.

19. Plaintiff and Defendants entered into an oral agreement regarding the marketing and distribution of Plaintiff's fresh organic raspberries, blueberries and blackberries in the United States.

20. Under the parties' oral agreement, Defendants agreed to accept Plaintiff's fresh organic raspberries, blueberries and blackberries on consignment for sale in the United States. Defendants shipped boxes and containers to Plaintiff's farm, and Plaintiff caused the produce to be packaged and shipped to Defendants for sale.

21. Defendants also agreed to market the produce at the best available market price and to pay Plaintiff all proceeds from these sale, minus a commission of 8%. Although they accepted Plaintiff's organic produce without complaint and sold the same to third parties, Defendants have failed and refused to provide the proceeds from the sales of the produce or an accounting for the sales made.

22. Plaintiff duly performed its duties under the parties' agreement..

23. As a direct and proximate cause of Defendants' breaches of the contract, Plaintiff has suffered damages in excess of $75,000 and in an amount to be proven at trial.

**SECOND CAUSE OF ACTION**

**(Violations of 7 U.S.C. §499a *et seq.* (PACA) Against All Defendants)**

24. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 23 of this Complaint, as if fully set forth herein.

25. Upon information and belief, Defendants are licensed under PACA. Because Defendants are licensed under PACA, all transactions between the parties concerning the above reference organic raspberries, blueberries and blackberries and all sales of these goods by the Defendants are governed by PACA, (7 U.S.C. § 449a-s).

26. As is relevant in this case, PACA that, "It shall be unlawful in or in connection with any transaction in interstate or foreign commerce...

> For any commission merchant, dealer, or broker to make, for a fraudulent purpose, any false or misleading statement in connection with any transaction involving any perishable agricultural commodity which is received in interstate or foreign commerce by such commission merchant, or bought or sold, or contracted to be bought, sold, or consigned, in such commerce by such dealer, or the purchase or sale of which in such commerce is negotiated by such broker; or to fail or refuse truly and correctly to account and make full payment promptly in respect of any transaction in any such commodity to the person with whom such transaction is had; or to fail, without reasonable cause, to perform any specification or duty, express or implied, arising out of any undertaking in connection with any such transaction..."

7 U.S. C. § 449b(4).

27. Plaintiff is an intended beneficiary under PACA.

28. In their dealings with Plaintiffs concerning the organic raspberries, blueberries and blackberries, Defendants engaged in unfair conduct in violation of PACA (7 U.S. C. § 449a-s) and the federal regulations promulgated thereunder, and against the interest of Plaintiff.

29. Defendants' violations of PACA and its federal regulations proximately caused damage to Plaintiff in excess of $75,000 and in an amount to be proven at trial.

**THIRD CAUSE OF ACTION**

**(Enforcement of PACA Trust Against All Defendants)**

30. Plaintiff repeats and re-alleges each and every allegation contained in Paragraphs 1 through 28, inclusive, and incorporates the same herein by this reference

31. In 2008, Plaintiff provided and delivered to Defendants in interstate commerce, wholesale amounts of fresh produce worth over $1 million dollars, the vast majority of which remains unpaid.

32. Defendants accepted the produce from Plaintiff without complaint.

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33. At the time of receipt of the produce, Plaintiff became a trust beneficiary in a statutory trust designed to assure payment to produce suppliers. The trust consists of all produce or produce related assets, including all funds commingled with other funds from other sources and all assets procured by such funds, in the possession or control of defendants since the creation of the trust.

34. Plaintiff preserved its interest in the PACA trust in the full amount owed by Defendants and remains a beneficiary until full payment is made for the produce.

35. Defendants have not disputed the debt in any way.

36. Defendants' failure and refusal to pay Plaintiff demonstrates that Defendants are failing to maintain sufficient assets in the statutory trust to pay Plaintiff and are dissipating trust assets.

37. The failure of Defendants to make payment to Plaintiff of trust funds in the full amount owed from the statutory trust is a violation of PACA and PACA regulations, and is unlawful.

38. Defendants THOMAS R. AM RHEIN and JUAN FERRARI PALLOMARI caused the entity Defendants to violate their statutory duties to preserve PACA trust assets belonging to Plaintiff and to pay Plaintiff for produce.

39. Defendants unlawfully dissipated PACA trust assets belonging to Plaintiff and failed to pay Plaintiff.

40. As a direct and proximate result of Defendant unlawful dissipation of PACA trust assets belonging to Plaintiff and Defendants' actions and continuing violations of PACA and PACA regulations, Plaintiff has suffered damages in an amount to be proven at trial.

## FOURTH CAUSE OF ACTION

**(Breach of Fiduciary Duty Against All Defendants)**

41. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 40 of this Complaint, as if fully set forth herein.

42. Under the parties' contract and PACA, Defendants were Plaintiff's agent(s) for the marketing, distribution, and sale of the organic raspberries, blueberries and blackberries in the United States. Defendants were a fiduciary of Plaintiff and had a duty to act in good faith on behalf of Plaintiff, including utilizing their best selling efforts with respect to Plaintiff's produce, fully and accurately accounting for each sales transaction and all related costs or charges, and promptly and fully remitting

sums due under the terms of the contract or from the sale of Plaintiff's organic raspberries, blueberries and blackberries.

43. Upon information and belief, Defendants breached their fiduciary duties to Plaintiff by 1) making false and misleading statements in connection with its handling of the organic raspberries, blueberries and blackberries, 2) by failing to fully and promptly pay Plaintiff in connection with Defendants' handling of the organic raspberries, blueberries and blackberries, 3) by failing to properly market Plaintiff's organic raspberries, blueberries and blackberries at the best available market prices, 4) by failing to properly account to Plaintiff in connection with Defendants' handling of Plaintiff's organic raspberries, blueberries and blackberries and 5) for failing to perform other duties arising out of the parties' relationship and imposed upon them by PACA.

44. Defendants acted with malice, fraud and/or oppression in its breaches of their fiduciary duties owed to Plaintiff, such that an award of punitive damages is justified.

45. As direct and proximate result of Defendants' breaches of their fiduciary duties to Plaintiff, Plaintiff has suffered damages in excess of $75,000.00 and in an amount to be proven at trial.

## FIFTH CAUSE OF ACTION

### (Constructive Fraud Against All Defendants)

46. Plaintiff realleges and incorporates by this reference the allegations contained in paragraphs 1 through 45 of this Complaint, as if fully set forth herein.

47. Defendants were Plaintiff's fiduciaries and had a duty to act in good faith on behalf of Plaintiff in all transactions connected with the Defendants' handling of Plaintiff's produce.

48. Defendants breached their duties to Plaintiff, by failing to properly account to Plaintiff for charges and costs on Plaintiff's account with Defendants, by not disclosing their failure to properly market Plaintiff's organic raspberries, blueberries and blackberries at the best market prices and through other actions which violated Defendants' duties to Plaintiff.

49. These actions by the Defendants constitute a failure to disclose material facts to their principal, Plaintiff. Defendants failure to disclose material facts to Plaintiff mislead Plaintiff and its agents to Plaintiff's prejudice.

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50. Defendants acted with malice, fraud and/or oppression in their concealment of material facts from Plaintiff, such that an award of punitive damages is justified.

51. As a result of Defendants' failure to disclose material facts related to the handling of Plaintiff's organic raspberries, blueberries and blackberries, Plaintiff has been damaged in excess of $75,000 and in an amount to be proven at trial.

**SIXTH CAUSE OF ACTION**

**(Conversion Against All Defendants)**

52. Plaintiff realleges and incorporates by this reference the allegations contained in paragraphs 1 through 51 of this Complaint, as if fully set forth herein.

53. Defendants have converted the proceeds from the sale of Plaintiff's organic raspberries, blueberries and blackberries to their own use and deprived Plaintiff of it money.

54. Plaintiff is owed the proceeds from the sale of the organic raspberries, blueberries and strawberries, and is entitled to possession of said proceeds from Defendants.

**SEVENTH CAUSE OF ACTION**

**(Goods Had and Received Against All Defendants)**

55. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 54, inclusive of this Complaint as though fully set forth herein.

56. During 2008, Plaintiff caused its raspberries, blueberries and blackberries to be shipped to Defendants for sale in the United States. Defendants accepted the delivery of these goods but have not paid for them. As such, Plaintiff is entitled to be paid for all goods delivered to Defendants and accepted by Defendants.

**EIGHTH CAUSE OF ACTION**

**(Unjust Enrichment and Constructive Trust Against All Defendants)**

57. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 56, inclusive of this Complaint as though fully set forth herein.

58. In the above transactions, Defendants received a benefit from Plaintiff. Plaintiff delivered its organic raspberries, blueberries and blackberries to Defendants with their consent. Defendants then sold Plaintiff's produce in the United States and retained proceeds from sales without compensating

Plaintiff for the net amount of each sale of Plaintiff's produce, after deducting the agreed upon 8% commission.

59. Plaintiff has suffered a legal detriment. Defendants have failed and refused to remit the sums due under the terms of their agreement with Plaintiff for the consignment, marketing, and sale of it organic raspberries, blueberries and blackberries in the United States. Plaintiff has repeatedly demanded that Defendants pay the amounts due and owing and provide a full accounting.

60. Defendants' retention of sums gained through the sale of Plaintiff's organic raspberries, blueberries, and blackberries at the expense of Plaintiff is unfair. Defendants received marketable product from Plaintiff which they then sold to their customers. Defendants retained the purchase price of Plaintiff's organic raspberries, blueberries and blackberries without compensating Plaintiff.

61. Based upon the actions of Defendants, Defendants should be forced to disgorge the full value of the benefit they received from the sale of Plaintiff's organic raspberries, blueberries and blackberries.

62. By reason of the wrongful manner in which Defendants deprived Plaintiff of the benefit of their bargain with them, Defendants are involuntary trustees holding a sum to be determined at trial, the profits and interest therefrom, and any other property purchased therewith, in constructive trust for Plaintiff, with the duty to reconvey the same to Plaintiff.

## NINTH CAUSE OF ACTION

**(Accounting Against All Defendants)**

63. Plaintiff hereby realleges and incorporates by reference paragraphs 1 through 62, inclusive of this Complaint as though fully set forth herein.

64. At all times mentioned herein, Defendants were engaged in the handling of produce in interstate and/or foreign commerce as commission merchants, dealers and/or brokers, subject to the provisions of PACA and the regulation promulgated by the Secretary of Agriculture of the United States of America pursuant to PACA.

65. In 2008, Plaintiff and Defendants entered into a oral agreement in which Defendants agreed to accept Plaintiff's fresh organic raspberries, blueberries and blackberries on consignment for sale in the United States. Defendants agreed to market the produce at the best available market price and to

pay Plaintiff all proceeds from these sale, minus a commission of 8%.

66. Defendants in fact took delivery of Plaintiff's produce on consignment for marketing, distribution, and sale in the United States. Despite repeated requests, Defendants have failed and refused to pay Plaintiff the proceeds from the sales of its produce which are now due to it.

67. Defendants' obligations under the contract and pursuant to PACA included the duty to truly and correctly account and make full payment promptly in respect to the fresh produce that Plaintiff shipped to Defendants. See 7 C.F.R. § 46.2(z) & (aa). Despite repeated requests, Defendants have also failed and refused to account to Plaintiff for their handling of Plaintiff's produce and all sales of the produce.

68. The exact amount of money due from Defendants to Plaintiff is unknown to Plaintiff and cannot be ascertained without a full and complete accounting by Defendants for their handling of Plaintiff's organic raspberries, blueberries and blackberries.

69. Plaintiff has repeatedly demanded that Defendants account for the aforementioned transactions and pay the amount found due to Plaintiff, but Defendants have failed and refused, and continue to fail and refuse, to render the accounting and to pay Plaintiff.

**WHEREFORE,** Plaintiff prays for judgement as follows:

1. For compensatory damages in an amount to be proven at trial;
2. For punitive damages in an amount to be proven at trial;
3. For attorneys fees incurred in connection with this matter;
4. For the costs and expenses incurred in connection with this matter; and
5. For such other and further relief as the Court may deem proper.

Dated: 7-22, 2008

SCUDI JOHNSON & AYERS, LLP

By: [signature]
J. Ray Ayers
Attorneys for Plaintiff

JS 44 (Rev. 12/07)

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED 2008 JUL 22 PM 4:30 CLERK US DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA BY DEPUTY

**I. (a) PLAINTIFFS**

Agrolibhere, S.A. de C.V.

**(b)** County of Residence of First Listed Plaintiff Baja Cal., Mexico
(EXCEPT IN U.S. PLAINTIFF CASES)

**(c)** Attorney's (Firm Name, Address, and Telephone Number)

Scudi Johnson & Ayers, 5440 Morehouse Dr., Ste 4400, San Diego, CA, 92121, (858) 558-1001

**DEFENDANTS**

Naturipe Berry Growers, Naturipe Farms, Naturipe Farms by Hortifruit, Hortifruit, Hortifruit Imports

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) '08 CV 1321 JAH NLS

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

| | PTF | DEF | | PTF | DEF |
|---|---|---|---|---|---|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

**CONTRACT**
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

**REAL PROPERTY**
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

**TORTS**

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

**CIVIL RIGHTS**
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

**PRISONER PETITIONS**
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

**FORFEITURE/PENALTY**
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

**LABOR**
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

**IMMIGRATION**
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

**BANKRUPTCY**
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

**PROPERTY RIGHTS**
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

**SOCIAL SECURITY**
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

**FEDERAL TAX SUITS**
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

**OTHER STATUTES**
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☒ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**): 7 U.S. C. § 499a-s

Brief description of cause: Breach of contract and violation of Perishable Agricultural Commodities Act

**VII. REQUESTED IN COMPLAINT:** ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND $** 1,000,000.00

CHECK YES only if demanded in complaint: **JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY** (See instructions): JUDGE DOCKET NUMBER

DATE 07/17/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 153245 AMOUNT $350 APPLYING IFP JUDGE MAG. JUDGE

TAC 7/22/08

**UNITED STATES**
**DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

**# 153245 - TC**

**July 22, 2008**
**16:28:44**

**Civ Fil Non-Pris**
USAO #.: 08CV1321
Judge..: JOHN A HOUSTON
Amount.: $350.00 CK
Check#.: BC2522

**Total-> $350.00**

FROM: AGROLIBHERE
VS.
NATURIPE BERRY GROWERS